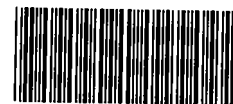


**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III**



SEMS DocID 2246982

IN THE MATTER OF:

EPA Docket No.

Metro Container Corporation Site
Superfund Site

ADMINISTRATIVE SETTLEMENT
AGREEMENT AND ORDER ON
CONSENT FOR REMOVAL ACTION

Respondents

Proceeding Under Sections 104, ~~106(a)~~,
107 and 122 of the Comprehensive
Environmental Response, Compensation,
and Liability Act, 42 U.S.C. §§ 9604,
9606(a), 9607 and 9622)

**ADMINISTRATIVE SETTLEMENT AGREEMENT AND
ORDER ON CONSENT FOR REMOVAL ACTION**

TABLE OF CONTENTS

	Page
I. JURISDICTION AND GENERAL PROVISIONS	3
II. STATEMENT OF PURPOSE	3
III. EPA'S FINDINGS OF FACT	3
IV. EPA'S CONCLUSIONS OF LAW	11
V. EPA' DETERMINATIONS	12
VI. PARTIES BOUND	12
VII. NOTICE TO THE STATE	13
VIII. RESPONSE ACTION PLAN DEVELOPMENT AND IMPLEMENTATION	13
IX. DESIGNATED PROJECT COORDINATORS	19
X. QUALITY ASSURANCE	20
XI. ACCESS	20
XII. DISPUTE RESOLUTION	22
XIII. DELAY IN PERFORMANCE AND STIPULATED PENALTIES	23

XIV.	FORCE MAJEURE AND NOTIFICATION OF DELAY	23
XV.	RESERVATION OF RIGHTS	24
XVI.	OTHER CLAIMS	26
XVII.	OTHER LAWS	26
XVIII.	EFFECTIVE DATE AND SUBSEQUENT MODIFICATION	26
XIX.	LIABILITY OF THE UNITED STATES GOVERNMENT	27
XX.	INDEMNIFICATION AND HOLD HARMLESS	27
XXI.	REIMBURSEMENT OF SOURCE AREA REMOVAL FUTURE RESPONSE COSTS	27
XXII.	CERTIFICATION OF COMPLIANCE	30
XXIII.	SHIPMENT OF HAZARDOUS SUBSTANCES	31
XXIV.	RECORD RETENTION	32
XXV.	RESERVED	32
XXVI.	DEFINITIONS	32
XXVII.	NOTICE OF COMPLETION	33
XXVIII.	COVENANT NOT TO SUE BY EPA	33
XXIX.	COVENANT NOT TO SUE BY RESPONDENTS	33
XXX.	CONTRIBUTION	34

**ADMINISTRATIVE SETTLEMENT AND ORDER ON CONSENT
FOR REMOVAL RESPONSE ACTION**

The parties to this Administrative Settlement and Order on Consent (~~"Settlement Agreement"~~), ~~_____~~, and ~~_____~~ (~~"Respondents"~~) and the United States Environmental Protection Agency (~~"EPA"~~), having agreed to the entry of this Settlement Agreement, it is therefore Ordered, that:

I. JURISDICTION AND GENERAL PROVISIONS

- 1.1 This Administrative Settlement Agreement and Order on Consent (~~"Settlement Agreement"~~) is entered into voluntarily by the United States Environmental Protection Agency (~~"EPA"~~) and the entities listed on Appendix 2 hereto (~~"Respondents"~~) (collectively ~~"the Parties"~~). This Settlement Agreement provides for the performance of a removal action by Respondents at or in connection with the Metro Container Corporation Site in and around the Borough of Trainer, Delaware County, Pennsylvania (hereinafter, the ~~"Site"~~) and the payment of Future Response Costs to be incurred by EPA in connection with the removal action.
- 1.2 ~~++~~ This Settlement Agreement is issued pursuant to the authority vested in the President of the United States by Sections ~~106(a)104, 107, and 124(a)122~~ of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (~~"CERCLA"~~), 42 U.S.C. §§ ~~9606(a) and 9622(a); 9604, 9607, and 9622~~. This authority was delegated to the Administrator of EPA on January 23, 1987 by Executive Order No. 12580, 52 Fed. Reg. ~~29232926~~ (January Jan. 29, 1987);, and further delegated to Regional Administrators by EPA Delegation No. 14-14-C, and further re-delegated by the Regional Administrator of EPA Region III to the Director of the, Hazardous Site Cleanup Division, EPA Region III Delegation 14-14-C and EPA Region III Delegation 14-14-D. ~~This Settlement Agreement pertains to property located at and near 2nd and Price Streets in the Borough of Trainer, Delaware County, Pennsylvania and which is further described below.~~
- 1.3 The Parties recognize that this Settlement Agreement has been negotiated in good faith and that the actions undertaken by Respondents in accordance with this Settlement Agreement do not constitute an admission of any liability. Respondents do not admit, and retain the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Settlement Agreement, the validity of the Findings of Fact, Conclusions of Law, and Determinations in Sections IV and V of this Settlement Agreement. Respondents agree to comply with and be bound by the terms of this Settlement Agreement and further agree that they will not contest the basis or validity of this Settlement Agreement or its terms.
- 1.4 ~~++~~ All terms and conditions of this Settlement Agreement, including any modifications hereto, are required by this Settlement Agreement. The Respondent agrees to undertake all actions required by the terms and conditions of this Settlement Agreement and to comply with all such terms and conditions.

- 1.5 ~~1.3~~ The Work shall be consistent with the National Oil and Hazardous Substances Pollution Contingency Plan, as amended ("NCP"), 40 C.F.R. Part 300; and CERCLA.
- ~~1.4 The Respondents consent to and will not contest EPA's authority or jurisdiction to issue or to enforce this Settlement Agreement.~~

II. STATEMENT OF PURPOSE

- 2.1 In entering into this Settlement Agreement, the mutual objectives of EPA and Respondents are to conduct a removal action, as defined in Section 101(23) of CERCLA, 42 U.S.C. § 9601(23), to abate, mitigate and/or eliminate the release or threat of release of hazardous substances at the Site (as hereinafter described), by performing a removal response action as described in this Settlement Agreement.

III. EPA'S FINDINGS OF FACT

For purposes of this Settlement Agreement, EPA finds the following:

- 3.1 The Metro Container Corporation Superfund Site ("Site") consists of (1) approximately 11 acres of land currently owned by Trainer Industries, LLC located at 2nd and Price Streets in the Borough of Trainer, Delaware County, Pennsylvania (Delaware County Folio Nos. 46-00-00444-00 and 46-00-00445-00), where the manufacture of, among other things, machine oils, paraffin wax, carbon disulfide and later, drum reclamation and recycling activities occurred from the 1890s through the late 1980s ("Metro Property"), and (2) all locations to which hazardous substances or ~~pollutions~~ pollutants and contaminants have migrated from the Metro Property. A map generally depicting (1) and (2) is attached hereto as "Appendix 1." ~~NEED TO DISCUSS.~~
- 3.2 The Metro Property is ~~bounded on~~ generally bounded by a commercial and residential area to the north, a scrap metal recovery business to the east, railroad operations to the south, and a refinery to the west by ~~Stoney Creek~~. Stoney Creek forms the western boundary and is a tributary of the Delaware River, with the confluence of the two streams located approximately 1,000 feet south of the Metro Property. Stoney Creek flows toward the south. The Delaware River and a portion of Stoney Creek abutting the Metro Property are tidally influenced.
- 3.3 For more than 100 years, the Metro Property has been used for industrial and commercial purposes.
- a. ~~Historic~~ Historical surveys indicate the Delaware Oil Works manufactured machine oils and paraffin wax at the Metro Property in the 1890s. Fires at the facility in 1886 and 1896 destroyed most or all of the refining operations, and both times the operations were rebuilt. Features visible on an 1891 survey map include, but are not limited to, underground oil tanks, underground wooden wax tanks, underground iron wax tanks, tar stills, wooden condensers, wax rooms, and agitators.

- b. By 1909, the Metro Property was occupied by Manufacturers Paraffine Company. Process structures visible on maps from this period suggest the facility continued to refine petroleum products into machine oil and wax. The maps suggest that Manufacturers Paraffine Company continued to operate at the Metro Property through at least 1917.
- c. Between approximately 1920 and 1959, Stauffer Chemical Corporation ("Stauffer") manufactured, among other things, carbon disulfide at the Metro Property. Wastes from these operations were placed into one or more earthen or concrete containment structures and otherwise came to be located on the Metro Property.
- d. Between 1963-1989, a number of drum recycling and reconditioning businesses operated at the Metro Property under separate owners, including Joseph A. Reis Company (1963-1969), Universal Container Corporation (1969-1983), and Metro Container Corporation (1983-1989). The various drum recyclers received drums containing residual quantities of paints, petroleum products, and other materials, including hazardous substances from various clients. According to a November 2005 report prepared for ConocoPhillips by MWH Americas, Inc. (MWH Report):
 - (1) the reconditioning operators received nearly 500,000 drums annually during peak years;
 - (2) drums deemed suitable for resale were emptied of residual waste and cleaned, tested for structural integrity, and painted;
 - (3) wastes from these operations, including residual drum wastes, acids, flocculants, and significant quantities of waste water generated during the cleaning process, were recirculated into the wastewater stream, placed into a 5-acre earthen lagoon or other containment features, disposed of on the ground surface, discharged into the sanitary sewer system, or released to Stoney Creek;
 - (4) drums determined to be unsuitable for resale were incinerated and/or crushed and buried on the Metro Property; and
 - (5) the lagoon was filled at some point between 1982-1985.

3.4 In December 1987, EPA conducted a removal site evaluation at the Metro Property. EPA observed an estimated 160,000 gallons of liquid wastes and sludges stored in a concrete containment structure and 110,000 gallons of waste stored in an estimated 2,000 55-gallon open-top drums that had been sent to the facility for reclamation. Samples were collected from an ash pile on site, sludge in drums, sludge in the lagoon, and liquid discharge from a drainpipe leading into Stoney Creek, among other locations.

- 3.5 In February 1988, the United States Coast Guard notified EPA of a reported release of hazardous substances to Stoney Creek from a PVC pipe emanating from the Metro Property. EPA subsequently conducted additional removal site evaluation activities at the Metro Property, including the collection of additional samples from Stoney Creek.
- 3.6 On August 26, 1988, based on the findings of the removal site evaluations, EPA signed an Action Memorandum selecting a removal response action for implementation at the Metro Property. EPA commenced the action, which was ultimately completed by a group of potentially responsible parties under an Administrative Order on Consent. The removal action included, but was not limited to, the installation of a perimeter fence, construction of a temporary retaining wall to prevent off-site migration of contaminants, and disposal of contaminated rainwater. Over 6,000 tons of sludge, contaminated soils, and drum wastes were removed. As part of the removal action, the concrete impoundment was drained of liquid wastes and sludges, cleaned, filled with layers of impermeable soils, covered with clean soil, and seeded with vegetation. The soils immediately adjacent to the impoundment walls, including the footprint of the secondary containment, were removed. All pipes entering the impoundment²² were capped. The sumps adjacent to the impoundment through which liquid ~~waste~~wastes previously flowed were cleaned and filled with concrete.
- 3.7 From approximately 1989 through 2000, the Metro Property was commercially inactive. ~~In 2000, Pennoni Associates, Inc. completed an investigation of the Metro Property on behalf of Trainer Industries, LLC. Numerous hazardous substances were identified in soils and ground water as well as in the sediments of adjacent Stoney Creek. The investigation included the installation of ground water monitoring wells and a geophysical investigation of the subsurface of a limited portion of the Metro Property.~~
- 3.8 In 2001, Trainer Industries, LLC purchased the Metro Property. The ~~property~~Metro Property has been used by Service Painting, Inc., an affiliate of Trainer Industries, LLC, until the present to store supplies and materials associated with its industrial painting business as well as to perform sandblasting and painting.
- 3.9 ~~In November 2005, MWH Americas, Inc. completed the MWH Report in connection with the potential acquisition of the Metro Property by ConocoPhillips. The MWH Report identified one pipe of unknown origin and numerous groundwater seeps entering Stoney Creek from the Metro Property; subsurface soil contaminated with non-aqueous phase liquids (NAPL), sludges, and very high concentrations of numerous hazardous substances including PCBs, PAHs, pesticides, VOCs, and inorganic contaminants; and dissolved ground water plumes of PCBs, PAHs, pesticides, VOCs, and inorganic elements. The report also identified the presence of PCBs, PAHs, pesticides, and inorganic elements in sediments of Stoney Creek and the Delaware River at concentrations above Regional-ecological screening levels. Numerous areas of magnetic anomalies indicating potential buried drums were identified through surface geophysical investigations and four test trenches. Buried and crushed drums, drum lids, flyash, sludge, construction debris, and several unidentified metal and PVC pipes were identified in test trenches.~~

3.9 ~~3.10~~ Removal site evaluations were completed by EPA in March 2000, November 2007, and April 2009. In July 2010, EPA conducted limited soil sampling at the Metro Property and replicated sediment sampling conducted in 2009 in support of Hazard Ranking System (HRS) screening for potential listing on the National Priorities List. The individual PCB congeners found in groundwater at the Metro Property were similar to the PCB congeners found in sediments samples collected from Stoney Creek and the Delaware River.

3.10 ~~3.11~~ The Metro Container Corporation Superfund Site was promulgated to the Superfund National Priorities List on March 15, 2012.

3.11 ~~3.12~~ The above-described sampling and analysis of subsurface soil, ground water, and sediment conducted at the Metro Property by EPA and others since 2005 confirmed the presence of high concentrations of PCBs, pesticides, PAHs, and other organic compounds and inorganic elements. The most heavily contaminated soils encountered through August 2013 were associated with certain source areas described below. Test excavations and soil cores in the source areas revealed the presence of NAPL and sludge. The area of NAPL and sludge generally existed beneath the area formerly containing the impoundment, concrete basin, and surrounding area to the western wall of the building. Conditions at the Metro Property prior to August 2013 included the following:

- a. The PCBs identified in the soil at the Metro Property ~~include~~ included Aroclor-1248, Aroclor-1254, and Aroclor-1260. The highest concentration of total PCBs identified in soil was 1,300 milligrams per kilogram (mg/kg). Elevated PCB concentrations were predominantly located on the northern and northwestern portion of the Metro Property adjacent to Stoney Creek. Elevated PCB levels also existed in the area of the NAPL near the former impoundment. The soil in this area included organic contaminants ~~which may facilitate the migration of PCBs in the environment (e.g., VOCs and SVOCs);~~ ground water in this area contained elevated PCB levels ~~indicating~~, suggesting that mobilization of this contaminant is occurring.
- b. Pesticides identified in soil at the Metro Property at elevated concentrations included (maximum concentrations presented) dieldrin (2.70 mg/kg), chlordane (27.1 mg/kg), dichlorodiphenyl-dichloroethane (DDD) (52.2 mg/kg), and dichlorodiphenyltrichloroethane (DDT) (32.5 mg/kg). Elevated pesticide concentrations were predominantly located on the northern and northwestern portion of the Metro Property adjacent to Stoney Creek.
- c. PAHs identified in soil at the Metro Property at elevated concentrations included (maximum concentrations presented) benzo(a)anthracene (1000 mg/kg), benzo(a)pyrene (990 mg/kg), benzo(b)fluoranthene (370 mg/kg), dibenzo(a,h)anthracene (330 mg/kg), indeno(1,2,3-cd)pyrene (210 mg/kg), chrysene (1,300 mg/kg), benzo(k)fluoranthene, 1-methylnaphthalene, and naphthalene. PAHs in soil were predominantly present at and in the vicinity of the former impoundment and concrete basin along with NAPL.

- d. Inorganic elements identified in soil at the Metro Property at elevated concentrations included (maximum concentrations presented) arsenic (92.1 mg/kg), lead (19,300 mg/kg), and mercury (24.0 mg/kg). The majority of the elevated arsenic concentrations were located south of the concrete holding tank in the footprint of the former impoundment and concrete basin. The elevated concentrations of lead and mercury also occurred within the footprint of the former disposal lagoon.
 - e. Dissolved-phase ground water plumes of these organic contaminants were found at the Metro Property, generally originating in the vicinity of the former impoundment concrete basin areas and migrating toward Stoney Creek. The concentration of total PCBs in ground water in the area of the former impoundment adjacent to Stoney Creek was 122,000 micrograms per liter (µg/L). In addition, these plumes included (maximum concentrations presented) benzo(a)anthracene (4,100 µg/L), dibenzobenz(a)pyrene (3,400 µg/L), benzo(b)fluoranthene (2,400 µg/L), dibenzo(a,h)anthracene (2,200 µg/L), indeno(1,2,3 cd)pyrene (1,500 µg/L), chrysene (6,400 µg/L), benzo(k)fluoranthene (2,400 µg/L), and naphthalene (6,400 µg/L), among others. ~~These concentrations were indicative of the presence of NAPL, and given the proximity to Stoney Creek, were expected to be a continual source of contamination to ground water and surface water if the contaminated soil and source material in the sources was not addressed. Along with the NAPL, soils in this area contained VOCs (e.g., toluene) and SVOCs (e.g., trichlorobenzene) which may facilitate the migration of the PCBs into the ground water.~~
- 3.12 ~~3.13~~ Many of the substances identified in Paragraph ~~3.12, 3.12~~ above, including, but not limited to, dieldrin, chlordane, DDD, DDT, benzo(a)anthracene, benzo(a)pyrene; benzo(b)fluoranthene, dibenzo(a,h)anthracene, indeno(1,2,3-cd)pyrene, chrysene, naphthalene, arsenic, lead, and mercury, are listed as hazardous substances at 40 C.F.R. § 302.4.
- 3.13 ~~3.14~~ Based on the information described above, on August 26, 2013, the Associate Director of the Office of Preparedness and Response, Hazardous Site Cleanup Division, EPA Region III, determined that a threat to public health, welfare, and/or the environment exists due to the actual or threatened release of hazardous substances from the Site and selected a removal response action for implementation at the Site. The selected removal response action was intended to address certain contaminant source areas (~~hereinafter~~ "Source Areas") at the Metro Property generally described as follows:
- a. **Former Impoundment Area:** An impoundment used for over 30 years to store a variety of liquid wastes; this source area includes one or more pipes, culverts, and sumps through which wastes flowed from the main building.
 - b. **Former Concrete Basin Area:** A ~~highly~~ contaminated soil area in which a reportedly unlined concrete-walled basin and its earthen secondary containment, former structures of uncertain purpose, and hundreds of waste sludge drums were

previously located; material within the basin was removed during the 1988 Removal Action and replaced with clean fill, although surrounding soils appear to have been left in place; also may be associated with the pipes, culverts, and sumps described above.

- c. **Crushed Drum Area:** An area of crushed drums containing residual hazardous substances and other unknown materials ~~known~~ identified through both magnetic anomalies identified through surface geophysical methods and a very limited number of test trenches excavated during past investigations.
- d. **PCB Soil Area:** An area of shallow and deep soil contaminated locally by elevated concentrations of PCBs; regions of high PCB concentrations within this area were identified through partial subsurface characterizations conducted during past investigations.

3.14 ~~3.15~~ By letter dated August 20, 2013, EPA notified Respondents _____, _____ of their potential liability under CERCLA with respect to the Site. By letter dated October 9, 2014, EPA notified Respondents _____, _____ of their potential liability under CERCLA with respect to the Site. Both letters invited Respondents to participate in actions which included:

- a. A removal response action to remove and dispose of certain source materials on the Metro Property ~~which have likely contributed to contamination in Stoney Creek and other portions of the Site; and~~
- b. A Remedial Investigation/Feasibility Study at the Site to comprehensively identify the nature and extent of contamination at the Site and to develop alternatives for remedial action.

3.15 ~~3.16~~ The recipients of the August 20, 2013 letter declined to perform the response work identified in that letter under an agreement with EPA.

3.16 ~~3.17~~ On August 26, 2013, the Associate Director of the Office and Preparedness Response within the Hazardous Site Cleanup Division, EPA Region III, signed an Action Memorandum selecting certain removal action for implementation at the Metro Property. The selected action included, without limitation, the following general activities:

- a. Implement erosion and sedimentation control features to minimize migration of hazardous substances from the ~~Source Area~~ source areas during implementation of the Removal Action.
- b. Implement water management ~~control~~ controls and actions to minimize the migration of storm water into and from the ~~Source Area~~ source areas during the performance of the Removal Action.
- c. Locate, excavate, and remove pipes, drains, and related features (including surrounding soils impacted by pipes, drains, and related features) in and around

the ~~Source Area~~source areas through which hazardous substances may migrate. If a particular feature through which hazardous substances may migrate cannot be removed (e.g., active storm drain), investigate the cause or reason for the migration of hazardous substances into such feature (e.g., crack or interconnection) and repair the feature or ~~take~~take steps to prevent hazardous substances from entering such feature.

- d. Locate, excavate, and remove buried drums, drum carcasses, their contents, and surrounding soils impacted by drum contents in and around the ~~Source Area~~source areas.
- e. Excavate, and remove soil contaminated with PCBs in and around the ~~Source Area~~source areas such that:
 - (1) total PCB concentrations in remaining soils to a depth of 11 feet contain less than 50 mg/kg at any location in the subsurface (i.e., below 1 foot);
 - (2) total PCB concentrations in remaining surface soils in the ~~Source Area~~source areas (i.e., soils within the upper 1 foot of the surface) contain less than 25 mg/kg; and
 - (3) total PCB concentrations in remaining soils in the ~~Source Area~~source areas containing NAPL contain less than 25 mg/kg.
- f. Backfill excavated areas. Grade and cover backfill and remaining soil in a manner ~~which~~that re-establishes flow patterns existing at the time the Removal Action was initiated and promotes sheetflow of storm waters towards Stoney Creek.
- g. Off-Site disposal of hazardous substances excavated ~~material~~ in accordance with CERCLA § 121(d)(3) and 40 C.F.R. § 300.440.

3.17 ~~3.18~~ On September 30, 2013, EPA began implementation of the selected removal action. During the action, EPA identified numerous previously unidentified subsurface features, pipe systems, buried and crushed drum caches, and ~~high~~ concentrations of hazardous substances, including PCBs. Subsurface features, including concrete impoundments, sumps, and catch basins, were identified. Several of the buried features and pipe networks contained water contaminated, ~~water contaminated~~ with NAPL, petroleum, and sludges of various ~~consistency~~consistencies. Pipe networks ~~comprise~~comprised of steel, terra cotta, wire-reinforced concrete, ceramics, and PVC that are believed to have been used by one or more of all previous operators at the Metro Property; were identified. Many pipe networks installed by former operators appear to have been modified for use by one or more subsequent operators. The majority of the pipe ~~network~~networks were currently or formerly connected to the main building complex and subsurface features; or were associated with structures that pre-date the main building complex. Several pipe networks were found to empty into ~~Stone~~Stoney Creek or ~~te~~into areas of the Metro

Property interpreted to formerly connect to a former inlet to Stoney Creek prior to landfilling.

- 3.18 ~~3.19~~ Caches of buried drums were found on the north, northwest, and central portions of the Metro Property. The majority of the drums were crushed and fragmented, and contained paint and sludge. Several intact drums filled with petroleum products were found.
- 3.19 ~~3.20~~ Hazardous substances identified in source material, soil, and ground water samples collected during the removal action include, but are not limited to, VOCs (toluene, benzene, 1,2,4-dichlorobenzene, xylenes, PCE, TCE, carbon disulfide, dimethyl disulfide, methanethiol), SVOCs (bis(2-ethylhexyl)phthalate, 1,1-biphenyl), PAHs (benzo(a)pyrene, benzo(a)pyrene, chrysene), PCBs (Aroclor-1248, Aroclor 1254, Aroclor-1260), and inorganic elements (arsenic, chromium, lead).
- 3.20 ~~3.21~~ As of August 2014, an estimated 7,100 tons of contaminated soil and debris and approximately 4,200 additional tons of soil and debris regulated as PCB remediation waste under the Toxic Substances Control Act were excavated during the 2013-2014 removal action and transported to licensed disposal facilities. An estimated 68,000 gallons of contaminated ground water generated during this removal action was transported to a licensed disposal facility.
- 3.21 ~~3.22~~ During implementation of the Removal Action at the Site, numerous pipe systems as well as two underground storage tanks were found. The pipe systems were removed during the Removal Action, when encountered, when possible and practical. However, several of the pipe systems originate from beneath or very near to dilapidated structures at the Site. These particular pipe systems could not be removed or addressed during the Removal Action due to safety concerns and funding and scope limits on the authorized removal action. The On-Scene Coordinator believes that hazardous substance within these remaining pipe systems is not contained and continues or threatens to continue to release or discharge into the environment.
- 3.22 ~~3.23~~ On February 24, 2015, the Association Director of the Office and Preparedness Response within the Hazardous Site Cleanup Division, EPA Region III, signed an Action-Memorandum determining that a threat to public health, welfare, and/or the environment continues to exist due to the actual or threatened release of hazardous substances from the Site and selecting certain additional removal action from actions for implementation at the Metro Property. The additional selected actions are intended to address contamination in certain source areas at the Metro Property, which means are identified in Appendix 23 of this Settlement Agreement and are as follows:
- a. Source Area A - This general area includes the area under the former "lid room" of the main building. Buried drums and wastes were alleged to be located under a floor in this portion of the main building. Analysis of material under the "lid room" floor includes elevated concentrations of numerous hazardous substances.

- b. Source Area B - This general area includes a trench system running through the floor of the main building (specifically, the "oven room") in and under which elevated concentrations of hazardous substances have been identified.
- c. Source Area C - This general area includes the area of the main building formerly functioning as a loading dock on which drums of various wastes were processed. The soil and ground water adjacent to and under this area is highly contaminated.
- d. Source Area D - This general area includes the area under the northern portions of the main building and its annexes and an immediately adjacent asphalt-covered area from which numerous pipes originate. The origination point and purpose for the pipes, which conveyed numerous hazardous substances, is unknown. The condition of these pipes (as observed in the removal of certain sections) is known to be poor and likely unable to contain any hazardous substances therein.

Based on the information described above, the Associate Director of the Office and Preparedness Response additionally determined that a threat to public health, welfare, and/or the environment exists due to the actual or threatened release of hazardous substances from the Site.

3.24 ~~Dieldrin; chlordane; DDD; DDT; benzo(a)anthracene; benzo(a)pyrene; benzo(b)fluoranthene; dibenzo(a,h)anthracene; indeno(1,2,3-cd)pyrene; chrysene; naphthalene; arsenic; chromium; lead; mercury; toluene; benzene; 1,2,4-dichlorobenzene; xylenes; PCE; TCE; carbon disulfide; methanethiol; bis(2-ethylhexyl)phthalate; and 1,1-biphenyl, and PCBs are listed as hazardous substance at 40 C.F.R. § 302.4.~~

IV. EPA'S CONCLUSIONS OF LAW

For purposes of this Settlement Agreement, and based on EPA's Findings of Fact set forth above, and upon EPA's review of the Administrative Record, EPA has determined that:

- 4.1 The Metro Container Corporation Superfund Site is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).
- 4.2 Each Respondent is a "person" as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).
- 4.3 Dieldrin, chlordane; DDD; DDT; benzo(a)anthracene; benzo(a)pyrene; benzo(b)fluoranthene; dibenzo(a,h)anthracene; indeno(1,2,3-cd)pyrene; chrysene; naphthalene; arsenic; chromium; lead; mercury; toluene; benzene; 1,2,4-dichlorobenzene; xylenes; PCE; TEC; carbon disulfide; methanethiol; bis(2-ethylhexyl)phthalate; and 1,1-biphenyl, and PCBs are "hazardous substances" within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), because they are listed at 40 C.F.R. § 302.4 (or other applicable citation).

- 4.4 "Hazardous substances," as defined in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), have been disposed of at the Metro Container Corporation Superfund Site and are currently present there.
- 4.5 The presence of hazardous substances at the Site and the past, present, and/or potential migration of hazardous substances from the Site constitutes an actual and/or threatened "release" as defined in Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).
- 4.6 Each Respondent is a responsible party as described in Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).
- 4.7 All legal requirements for issuance of this Settlement Agreement have been met.

V. EPA'S DETERMINATIONS

Based on the Findings of Fact and Conclusions of Law; set forth above, and upon EPA's review of information for the Administrative Record, EPA has determined that:

- 5.1 The actual and/or threatened release of hazardous substances from the Site may present an imminent and substantial endangerment to the public health or welfare or the environment.
- 5.2 The Work is necessary to protect the public health and welfare and the environment.
- 5.3 Because there is a threat to public health or welfare or the environment, a removal action is appropriate to abate, minimize, stabilize, mitigate or eliminate the release or threat of release of hazardous substances at or from the Site.

VI. PARTIES BOUND

- 6.1 This Settlement Agreement shall apply to and be binding upon EPA and its agents, and upon Respondents and their agents, successors, and assigns. Neither a change in ownership or corporate or partnership status of any Respondent, nor a change in ownership or control of the Site, shall in any way alter Respondents' responsibilities under this Settlement Agreement.
- 6.2 In the event that any Respondent files for or is placed into bankruptcy, that Respondent shall notify EPA within three days of such event.
- 6.3 The Respond shall provide a copy of this Settlement Agreement to all contractors, subcontractors, supervisory personnel, laboratories and consultants retained by Respondents to conduct any portion of the Work to be performed by Respondents pursuant to this Settlement Agreement. Respondents shall require in any and all contracts related to this Site that the Work that is the subject of such contract be performed within the time and in the manner set forth in this Settlement Agreement.

- 6.4 The undersigned representative of each Respondent certifies that he or she is fully authorized to enter into the terms of this Settlement Agreement and to execute and legally bind such Respondent to this Settlement Agreement.
- 6.5 Respondents are jointly and severally liable for compliance with the provisions of this Settlement Agreement. All references to "Respondents" herein shall mean each and every Respondent, both collectively and individually. The failure by one or more of the Respondents to comply with all or any part of this Settlement Agreement shall not in any way excuse or justify noncompliance by any other Respondent. Further, the compliance by one or more Respondents with all or part of this Settlement Agreement shall not in any way excuse or justify noncompliance by any other Respondent.

VII. NOTICE TO THE STATE

- 7.1 Notice of issuance of this Settlement Agreement has been given to the Commonwealth of Pennsylvania pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

VIII. RESPONSE ACTION PLAN DEVELOPMENT AND IMPLEMENTATION

- 8.1 Respondents shall commence and complete performance of the following response action within the time periods specified herein or as set forth in the approved Remedial Action Plan.
- 8.2 Within five (5) business days of the effective date of this Settlement Agreement, Respondents shall notify EPA in writing of the identity and qualifications of the contractor, subcontractor, supervisory personnel, and other persons who will be primarily responsible for developing the Response Action Plan ("RAP") required by this Section. Respondents shall further notify EPA in writing of the identity and qualifications of all contractors, subcontractors, supervisory personnel and other persons selected by Respondents who will conduct all or any portion of the response action no less than five (5) days prior to commencement of the response action to be performed by such persons. Respondents shall ensure that all contractors, subcontractors, supervisory personnel and/or other persons retained to perform the response action shall meet the applicable Occupational Safety and Health Administration ("OSHA") requirements as defined in 29 C.F.R. § 1910.120. The Respondents' selection of all contractors, subcontractors, supervisory personnel and other persons who will perform the response action; the Respondents' Project Coordinator designated pursuant to Section IX; and any replacements to any such persons are subject to disapproval by EPA at any time upon written notice to Respondents. In the event of any such disapproval by EPA, Respondents shall notify EPA within ~~five~~thirty (30) calendar days of receipt of such EPA disapproval of the person(s) who will replace the one(s) disapproved by EPA. If a person's selection is disapproved by EPA, they shall not perform such specified response action.

dispose of waters off-Site in accordance with CERCLA 121(d)(3) and 40 C.F.R §300.440.

- g. Prepare and maintain temporary storage for hazardous substances generated during the Work.
- h. ~~Locate~~ Within each Source Area, locate, excavate, and remove pipes, drains, and related features (including surrounding soils impacted by pipes, drains, that are determined to be impacted based on visual and/or analytical evidence. Remove any related features) in and around the Source Areas through which hazardous substances may migrate. If a particular feature through which hazardous substances may migrate cannot be removed (e.g., active storm drain); investigate the cause or reason for the migration of hazardous substances into such feature (e.g., crack or interconnection) and repair the feature or takes steps to prevent hazardous substances from entering such feature.
- i. ~~Remove all visible hazardous substances and contaminated oils from any liquids and solids found to be within tanks, basins, sumps, and similar features that may be encountered under the buildings and associated with the Source Areas or otherwise remove such features.~~
- j. Except as provided herein, excavate, and remove soil contaminated with PCBs in ~~and around the Source Area~~ Areas such that
 - (i) total PCB concentrations in remaining soils to a depth of 6 feet contain less than 50 mg/kg at any location in the subsurface (i.e., below 1 foot);
 - (ii) total PCB concentrations in remaining surface soils in the Source Areas (i.e., soils within the upper 1 foot of the surface) contain less than 25 mg/kg; and
 - (iii) total PCB concentration in remaining soils in the Source Areas containing NAPL contain less than 25 mg/kg.

Excavation to remove PCBs shall not compromise the stability of any remaining structure. Excavation below the depth of underground water shall be dependent upon the ability to reasonably control movement of water into the excavated area as determined by the OSC.

- k. Segregate excavated soils and debris based upon PCBs concentration (i.e., greater than 25 or 50 mg/kg) and the presence of NAPL.
- l. Manage excavated soils and debris such that migration of water into or from the soils and debris is minimized.
- m. Backfill excavated areas. Soils and demolition debris such as brick, block, or rubble ~~which contains~~ that contain PCBs less than 25 mg/kg and no evidence of

8.3 Respondents shall accomplish the following items:

- a. ~~Implement facilities and measures necessary to prevent unauthorized access to the Source Areas identified in Paragraph 3.234.22 (hereinafter "Source Areas") by trespassers.~~
- b. Implement erosion and sedimentation control features (e.g., silt fencing and vegetative cover) to minimize migration of hazardous substances from the Source Areas during implementation of the Work.
- c. Photo-document and remove through demolition the dilapidated buildings ~~now believed to be covering the pipe systems and contaminated soils from which hazardous substances, including PCBs, are, or threaten to be, migrating/migrate.~~ The buildings are identified on Appendix 2-3 and contain the Source Areas A, B, C, and D. Stage demolition materials for possible re-use on the Metro Property as backfill (brick and concrete), recycling (e.g., non-contaminated brick and metal), or off-Site disposal (e.g., wood, shingles). Demolition is anticipated as follows (throughout full demolition of any or all of these areas may be ~~required/performed if the OSC determines or Respondents determine that such demolition is necessary for safety reasons or to facilitate mitigation of threats presented by the release or threatened release of hazardous substances~~):
 - (1) Oven Room: Complete demolition and removal of floor;
 - (2) Attached Rooms South of Oven Room: Complete demolition of "lid room," including removal of floor, and partial demolition of remainder pending extent of removal necessitated by conditions found in adjacent areas;
 - (3) Former Loading Dock: Partial demolition and removal of floor pending observed conditions; and
 - (4) Former Boiler Room and Adjacent Area Under Asphalt: Partial demolition and removal of floor/asphalt pending observed conditions.
- d. Use engineering controls such as water sprays to suppress dusts that may be emitted during the implementation of the Work.
- e. Implement water management controls and actions, which may include (among other things) construction of berms and trenches and pumping and temporary collection and containment of potentially contaminated water, to minimize the migration of storm water into and from the Source Areas during performance of the Work.
- f. Treat waters accumulated as a result of subparagraph e above, and discharge such waters to the local sewage treatment plant or, if such discharge is not feasible,

NAPL may be used to backfill excavated areas. EPA has selected the 25 mg/kg PCB criteria for excavation limits and reuse of backfill in light of the expected future industrial/commercial use of the facility as set forth in EPA's "Guidance on Remedial Actions for Superfund Sites" and the expected future PCB clean up level to be selected following the RI/FS.

- n. Grade and cover backfill and remaining soil in a manner which that re-establishes flow patterns existent at the time the Removal Action was initiated and promotes sheetflow of storm waters towards Stoney Creek.
- o. Dispose off site the hazardous substances (e.g., contaminated water, pipe systems, drums, drainage features, and PCB, or NAPL-contaminated soil) removed during the Work and other waste associated with the Work, in accordance with CERCLA 121(d)(3) and 40 C.F.R 300.440.
- p. Remove security measures installed pursuant to subparagraph a above.
- q. Provide site specific health and safety measures, including preparation and implementation of a Health and Safety Plan ("HASP") for actions to be performed at the Site, to protect the health and safety of workers, other personnel, and the public from the hazardous substances and work-related health and safety hazards during performance of the response action specified herein. The HASP shall, as appropriate, provide for proper decontamination of personnel and equipment, monitoring and control of offsite migration of hazardous substances during the performance of activities at the Site, and protection of public health from exposure to hazardous substances during the conduct of activities at the Site pursuant to this Settlement Agreement. Health and safety requirements in the HASP shall be at least as stringent as those set forth in Occupational Safety and Health Administration and EPA requirements, including, but not limited to, requirements contained in 29 C.F.R. § 1910.120 and/or EPA Standard Operating Safety Guides (July 5, 1988).
- r. Obtain a Hazardous Waste Generator Identification Number.
- s. Develop and follow an expeditious schedule for implementation of the RAP.

8.4 Within ~~thirtysixty~~ (3060) business days of the effective date of this Settlement Agreement (excluding Federal holidays), Respondents shall submit to EPA for approval a RAP detailing the response action to be implemented for the items specified in Paragraph 8.37.2 above. To the extent that information concerning the details of a particular item does not yet exist so that it can be described in the RAP, the RAP shall set forth an expeditious schedule and plan for submittal of RAP supplement(s) to EPA for approval, which supplement(s) shall fully detail such items. All references to the review, approval, and enforcement of the RAP shall also be applicable to any RAP supplement(s). The RAP shall include, among other things, a schedule for expeditious performance of the response actions required by this Settlement Agreement. The RAP shall be consistent

with the NCP and shall be subject to approval by EPA according to the provisions of Paragraph ~~8-57.5~~ and ~~8-97.9~~ below.

- 8.5 EPA will review the RAP and notify the Respondents of EPA's approval or disapproval of the RAP. In the event of disapproval, EPA will specify the deficiencies in writing. The Respondents shall respond to and correct the deficiencies identified by EPA and resubmit the RAP to EPA within ~~(5)thirty (30)~~ business days of receipt of EPA disapproval or such longer time as may be specified by EPA ~~in its discretion or otherwise agreed to by the Parties~~. Exercise of EPA's discretion with respect to such period shall not be subject to the dispute resolution procedures set forth in Section ~~XXI~~ of this Settlement Agreement. Approval, disapproval, and/or modification by EPA of the subsequent RAP submission shall be according to the provisions of Paragraph ~~8-97.9~~ below.
- 8.6 Within ~~five~~ten (5)10 business days of receipt from EPA of written approval to proceed with implementation of the EPA-approved RAP ("written approval to proceed"), the Respondents shall commence implementation of such RAP and complete it in accordance with the RAP and the schedule therein. In the event EPA determines that any portion of the response action performed is deficient, and EPA requires Respondents to correct or re-perform such portion of the response action pursuant to this Settlement Agreement, Respondents shall correct or re-perform the response action or portion of the response action in accordance with a reasonable schedule provided by EPA.
- 8.7 Beginning ~~seven~~fourteen (7)14 calendar days subsequent to the date of receipt of EPA approval of the RAP and every ~~seven (7) calendar days~~month thereafter, or such longer interval as may be determined in writing by the EPA Project Coordinator designated pursuant to Section IX, and until EPA advises Respondents that the Work is complete, the Respondents shall provide EPA with a progress report for each preceding ~~7 day period~~month or, if applicable, the period specified in writing by the EPA Project Coordinator. The progress reports shall include, at a minimum: 1) a description of the response action completed and the actions that have been taken toward achieving compliance with this Settlement Agreement; 2) a description of all data anticipated and activities scheduled for the next ~~7 calendar days~~month or, if applicable, the period specified in writing by the EPA Project Coordinator; 3) a description of any problems encountered or anticipated; 4) any actions taken to prevent or mitigate such problems; 5) a schedule for completion of such actions; 6) copies of all analytical data received during the reporting period; and 7) all modifications to the response action, RAP, and schedule made in accordance with Section ~~XIV~~XIII of this Settlement Agreement during the reporting period.
- 8.8 Documents, including plans, reports, sampling results, and other correspondence to be submitted pursuant to this Settlement Agreement, shall be sent by electronic mail, certified mail, or overnight mail to the EPA Project Coordinator designated pursuant to Section ~~IX~~XII.
- 8.9 All reports, plans, approval letters, specifications, schedules, and attachments required by this Settlement Agreement are subject to EPA approval and shall be deemed incorporated

into this Settlement Agreement upon approval by EPA. In the event that EPA approves a portion of the RAP, report, or other item required to be submitted under this Settlement Agreement, the approved portion shall be enforceable under this Settlement Agreement. In the event of conflict between this Settlement Agreement and any document attached hereto, incorporated in, or enforceable hereunder, the provisions of this Settlement Agreement shall control. In the event that EPA disapproves any required submission, EPA will (1) specify the deficiencies in writing, and/or (2) submit its own modifications to the Respondents to accomplish the Work outlined in Paragraph 8-37.2 above. Respondents shall amend and submit to EPA a revised submission that responds to and corrects the specified deficiencies within ~~thirty~~ (530) business days of receipt of EPA disapproval or such longer time as may be specified by EPA ~~in its discretion~~ or otherwise agreed to by the Parties. Exercise of EPA's discretion with respect to such period shall not be subject to the dispute resolution procedures set forth in Section ~~XXI~~ of this Settlement Agreement. In the event that EPA submits its own modifications to the Respondents, the Respondents are hereby required to incorporate such modifications. Any non-compliance with EPA-approved reports, plans, specifications, schedules, attachments, or submission of deficient revisions following EPA disapproval, or non-compliance with an EPA-required modification, shall be considered failure to comply with a requirement of this Settlement Agreement. Determination(s) of non-compliance will be made by EPA.

- 8.10 ~~In~~-In addition to the information and documents otherwise required by this Settlement Agreement, Respondents shall provide to EPA, upon written request, any and all ~~non-privileged~~ information and documents in any of their possession, custody, or control related to the Site, including, but not limited to: Site analytical data (including raw data); Site safety data; Site monitoring data; operational logs; copies of all hazardous waste manifests created during the Work (including copies of all hazardous waste manifests signed upon receipt of the hazardous wastes by a licensed treatment, storage or disposal facility); the identity of treatment, storage, and/or disposal facilities used; the identity of transporters used; the identity of any contractors, subcontractors and supervisory personnel used; information and documents concerning Respondents' compliance with Quality Assurance and Quality Control requirements of this Settlement Agreement; information and documents relating to Respondents' efforts to secure access; and information and documents relating to any project delays. Nothing herein shall be interpreted as limiting the inspection and information-gathering authority of EPA under Federal law.
- 8.11 Within ~~twenty~~ forty-five (2045) calendar days of the date Respondents conclude they have completed implementation of the RAP and the items identified in Paragraph 8-37.2, Respondents shall submit a written Final Report to EPA, subject to EPA approval described in Paragraph 8-97.9 above. The written report shall detail the work undertaken to implement the RAP and the items identified in Paragraph 8-37.2 and shall be certified by Respondents in accordance with the terms of Section ~~XXI~~ XIX of this Settlement Agreement. EPA will review the adequacy of Respondents' implementation of the RAP and accomplishment of items specified in Paragraph 8-37.2 above. EPA will notify Respondents, in writing, of any discrepancies in the Final Report or deficiencies in the

execution of the RAP and the items identified in Paragraph ~~8-37.3~~ and the actions required to correct such discrepancies or deficiencies. Within ~~five~~thirty (530) business days of receipt of notification by EPA, or as otherwise specified by EPA, Respondents shall, as directed by EPA, amend the Final Report, develop an additional plan, or amend the existing RAP to address such discrepancies or deficiencies. Any additional plan or amendment to the RAP will be subject to the approval procedures outlined in Paragraphs ~~8-57.5~~ and ~~8-97.9~~ above. Respondents ~~all~~shall perform all actions approved by EPA in a manner consistent with the NCP and all applicable Federal laws and regulations, as required by the NCP.

- 8.12 Respondents shall not handle or remove any hazardous substances from the Site except in conformance with the terms of this Settlement Agreement, including, without limitation, Section ~~XXHXX~~ of this Settlement Agreement and all applicable Federal, State and local laws and regulations, as required by the NCP. Any transfer of hazardous substances, pollutants and contaminants from the Site to an off-site facility required by this Settlement Agreement shall be performed in accordance with section 121(d)(3) of CERCLA, 42 U.S.C. § 9621(d)(3). In addition, any transfer of hazardous substances, pollutants, and contaminants from the Site to an off-site facility for treatment, storage, or disposal required by this Settlement Agreement shall be performed in accordance with 40 C.F.R. § 300.440.
- 8.13 Respondents shall not commence any Work except in conformance with the terms of this Settlement Agreement. Respondents shall not commence implementation of the RAP developed hereunder until receiving written EPA approval to proceed pursuant to Paragraph ~~8-6.7.6~~. No Respondent shall interfere in any way with the performance of Work in accordance with this Settlement Agreement by any other Respondent(s), nor may any Respondent impede or prevent any other Respondent(s) from reasonable access to any area of the Site to comply with the requirements of this Settlement Agreement.
- 8.14 Respondents shall immediately notify EPA's Project Coordinator and the National Response Center {(800) 424-8802} and any other party required by law in the event of any action or occurrence during the pendency of this Settlement Agreement which causes or threatens to cause an additional release of hazardous substances, pollutants or contaminants on, at, or from the Site; or which may create a danger to public health, welfare, or the environment.
- 8.15 In the event that EPA believes that response action or other activities at the Site by the Respondents are causing or may cause a release or potential release of hazardous substances, or are a threat to public health or welfare or to the environment, EPA may, in its discretion, immediately halt or modify such response actions for other activities to eliminate or mitigate such actual or potential releases or threats.

IX. DESIGNATED PROJECT COORDINATORS

- 9.1 Respondents shall designate a Project Coordinator and shall notify EPA of such designation no later than five (5) calendar days after the effective date of this Settlement Agreement. Designation of a Project Coordinator shall not relieve Respondents of their

obligation to comply with the requirements of the Settlement Agreement. The Respondents' Project Coordinator shall be a technical and/or managerial representative of the Respondents and may be a contractor and/or consultant; provided, however, the Respondents' Project Coordinator shall not be their legal representative in this matter. The Project Coordinator for EPA designated pursuant to this Section and the Project Coordinator for the Respondents shall be responsible for overseeing the Work. To the maximum extent possible, communications between the Respondents and EPA and all documents concerning the activities performed pursuant to the terms and conditions of this Settlement Agreement, including plans, reports, approvals and other correspondence, shall be directed to the Project Coordinators.

9.2 The Project Coordinator for EPA is:

Michael Towle (3HS31)
U.S. EPA Region III
1650 Arch Street
Philadelphia, PA 19103
(215) 814-3272
Towle.michael@epa.gov

- 9.3 Respondents shall have the right to change their Project Coordinator. Such a change shall be accomplished by notifying the EPA Project Coordinator in writing at least five (5) calendar days prior to the change.
- 9.4 EPA shall have the right to change its Project Coordinator at any time without prior notice to Respondents. EPA's intent is to notify the Respondents as soon as practicable following any such change of its Project Coordinator.
- 9.5 The absence of the EPA Project Coordinator from the Site shall not be cause for the stoppage or delay of Work except when such stoppage or delay is specifically required by EPA.
- 9.6 The EPA Project Coordinator shall have the authority to ~~halt~~ lawfully vested in an OSC by the NCP. In addition, the EPA Project Coordinator shall have the authority, consistent with the NCP, to halt, conduct, or modify Work or other activities performed by Respondents at the Site in order to eliminate a release or threat of release of hazardous substances ~~direct any Work required by this Settlement Agreement when the EPA Project Coordinator determines that conditions at the Site may present an immediate~~ endangerment to public health, welfare, or the environment. Such direction by the EPA Project Coordinator may be given verbally or in writing to the Respondents' Project Coordinator or Respondents' on-site representative. If such direction is given verbally, the EPA Project Coordinator will later memorialize such direction in writing.

X. QUALITY ASSURANCE

- 10.1 Respondents shall use quality assurance, quality control, and other technical activities and chain of custody procedures for all samples consistent with "EPA Requirements for

Quality Assurance Project Plans (QA/R5)" (EPA/240/B-01/003, March 2001, reissued May 2006), "Guidance for Quality Assurance Project Plans (QA/G-5)" (EPA/240/R-02/009, December 2002), and subsequent amendments to such guidelines upon notification by EPA to Respondents of such amendment. Amended guidelines shall apply only to procedures conducted after such notification.

- 10.2 The Respondents shall consult with EPA in planning for, and prior to, all sampling and analysis required by the approved RAP. The Respondents shall use a laboratory(s) ~~which that~~ has a documented Quality Assurance Program that complies with EPA guidance document QAMS-005/80.

XI. ACCESS

- 11.1 As of the effective date of this Settlement Agreement, Respondents shall provide to each other and to EPA and its employees, agents, consultants, ~~Contractors~~contractors, and other authorized and/or designated representatives, for the purposes of conducting and/or overseeing the Work, access to all property owned or controlled by Respondents wherein Work must be undertaken. Such access shall permit EPA and its employees, agents, consultants, contractors and other authorized and designated representatives to conduct all activities described in Paragraph 11.3 of this Settlement Agreement.
- 11.2 To the extent that property wherein Work must be undertaken is presently owned or controlled by parties other than any of the Respondents, the Respondents shall use their best efforts to obtain Site access agreements from the present owners. Such access agreements shall be finalized as soon as practicable but no later than ten (10) calendar days after receiving EPA's written approval to proceed. Such Agreements shall provide reasonable access for the Respondents and their employees, agents, consultants, contractors, and other authorized and designated representatives to conduct the work, and for EPA and its designated representatives to conduct the activities outlined in Paragraph 11.3 below. In the event that any property owner refuses to provide such access or access agreements are not obtained within the time designated above, whichever occurs sooner, the Respondents shall notify EPA at that time, in writing, of all efforts to obtain access and the circumstances of the failure to obtain such access. EPA may then take steps to provide such access. Respondents shall reimburse the United States for all costs incurred obtaining access ~~which that~~ are not inconsistent with the NCP. Best efforts shall include, but not be limited to, agreement to reasonable conditions for access and/or the payment of reasonable fees.
- 11.3 In accordance with law, and regulation, as appropriate, EPA and its employees, agents, contractors, ~~Consultants~~consultants, and other authorized and designated representatives shall have the authority to enter and freely move about the location where the response actions and/or Work is being performed at all reasonable times for the purposes of, inter alia: inspecting Work, records, operating logs, and contracts related to the Site; reviewing the progress of the Respondents in carrying out the terms of this Settlement Agreement; conducting such tests as EPA deems necessary; using a camera, sound recording, or other documentary type equipment; and verifying the data submitted to EPA by the Respondents. The Respondents shall permit such persons to inspect and copy all records,

files, photographs, documents, and other writings, including all sampling and monitoring data, in any way pertaining to the Work.

- 11.4 Respondents may make a claim of business confidentiality for information submitted pursuant to this Settlement Agreement in the manner described in 40 C.F.R. § 2.203(b). Such an assertion shall be adequately substantiated in accordance with 40 C.F.R. § 2.204(e)(4) at the time the assertion is made. Information subject to a confidentiality claim shall be made available to the public by EPA only in accordance with the procedures set forth in 40 C.F.R. Part 2, Subpart B. If no such claim of business confidentiality accompanies the information when it is submitted or made available to EPA, the submitted information may be made available to the public by EPA without further notice to Respondents.
- 11.5 The Respondents may withhold those records and documents covered by any privilege or protection recognized under federal law and applied by federal courts in actions commenced by the United States. In the event that the Respondents withhold a document as privileged, the Respondents shall provide EPA with the title of the document, the date of the document, the name(s) of the author(s) and address(es)/recipient(s), a description of the nature of the document, and identification of the privilege asserted at the time such document is required to be provided to EPA.
- 11.6 No claim of confidentiality or privilege shall be made regarding any data required to be submitted pursuant to this Settlement Agreement, including, but not limited to, sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or documents or information evidencing conditions at or around the Site. Nor shall such claims be made for analytical data; site safety data; Site monitoring data; operational logs; hazardous waste manifests; identities of treatment, storage and/or storage facilities used; identities of transporters used; identities of any contractors or subcontractors used in performing work required by this Settlement Agreement.
- 11.7 Notwithstanding any provision of this Settlement Agreement, EPA retains all of its access and information-gathering authorities and rights under CERCLA and any other applicable statute and regulation.

XII. DISPUTE RESOLUTION

- 12.1 Unless otherwise expressly provided for in this Settlement Agreement, the dispute resolution procedures of this Section XI shall be the exclusive mechanism for resolving disputes arising under this Settlement Agreement. The Parties shall attempt to resolve any disagreements concerning this Settlement Agreement expeditiously and informally.
- 12.2 ~~12.1 Except as provided elsewhere in this Settlement Agreement, if the~~ If Respondents object to any EPA notification of deficiency, disapproval or other EPA action taken pursuant to this Settlement Agreement, including billings for oversight costs, the Future Response Costs for which Respondents are obligated to pay pursuant to this Settlement Agreement, they shall notify EPA in writing of their objection(s) within fourteen (14) calendar days of receipt of such notification or action, such determination, unless the

objection(s) has/have been resolved informally. EPA and Respondents shall have fourteen (14) calendar days from EPA's receipt of Respondents' written objection(s) to resolve the dispute (the "Negotiation Period"). The Negotiation Period may be extended at the sole discretion of EPA. Such extension may be granted verbally but must be confirmed in writing.

- ~~12.2 EPA and the Respondents shall have fourteen (14) calendar days from the receipt by EPA of the notification of objection to reach agreement. If agreement cannot be reached on any issue within this fourteen (14) day period, EPA will provide a written statement of its decision to the Respondents. Respondents' obligations under this Settlement Agreement shall not be tolled by submission of any objection for dispute resolution under this Section XII.~~
- 12.3 In order to prevail in any dispute regarding oversight costs, Respondents must demonstrate that the costs have been calculated incorrectly, or have been incurred in a manner inconsistent with the NCP.
- 12.4 Following resolution of the dispute, as provided by this Section XII, Respondents shall ~~perform~~ fulfill the ~~Work~~ requirement that was the subject of the dispute in accordance with the agreement reached or EPA's decision. To the extent that Respondents do not prevail upon resolution of any dispute involving any contested costs other than oversight costs, Respondents shall submit to EPA, within fourteen (14) calendar days of receipt of such resolution, all such costs determined to be owed to EPA, including any accrued interest, as specified in Paragraph 13.1 below. Payment of oversight costs, including interest, following resolution of a dispute shall be governed by Paragraph 21.3 of this Settlement Agreement.
- 12.5 Notwithstanding any other provision of this Settlement Agreement, no action or decision by EPA pursuant to this Settlement Agreement shall give rise to any right to judicial review except as set forth in Section 113(h) of CERCLA, 42 U.S.C. § 9613(h).

XIII. DELAY IN PERFORMANCE AND STIPULATED PENALTIES

- 13.1 For each day, or portion thereof, that Respondents fail to comply with any requirement of this Settlement Agreement at the time and in the manner set forth herein, the Respondents shall be liable upon demand to EPA for the sums set forth below as stipulated penalties. All payments to EPA under this Section XIII shall be paid in accordance with payment instructions to be provided by EPA ~~at the time of the~~ within thirty (30) days of Respondents' receipt from EPA of a demand for payment of stipulated penalties ~~the~~ penalties, unless Respondents invoke the dispute resolution procedures in accordance with Section XII. All payments shall indicate that the payment is for stipulated penalties, and shall reference EPA Region III and Site ID Number 032H, the EPA Docket Number _____, and the name and address of the Respondents making payment. Copies of the transmittal letters and the checks shall ~~simultaneously~~ simultaneously be sent to EPA's Project Coordinator and to the following:

Docket Clerk (3RC00)
U.S. EPA Region III
1650 Arch Street
Philadelphia, PA 19103-2029

Daria Arnold (3PM30)
U.S. EPA Region III
1650 Arch Street
Philadelphia, PA 19103-2029

- 13.2 Stipulated penalties shall accrue in the amount of ~~\$5,000 per calendar day per violation~~ 1,000 per calendar day for the first seven (7) days and \$2,500 per day for each day thereafter. In the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph 15.3, Respondents shall be liable for a stipulated penalty in the amount of \$50,000. Neither the accrual of nor demand for stipulated penalties set forth in this Section XIII shall preclude EPA from pursuing other penalties or sanctions available to EPA for Respondents' failure to comply with the requirements of this Settlement Agreement.

XIV. FORCE MAJEURE AND NOTIFICATION OF DELAY

- 14.1 The Respondents, through their Project Coordinator, shall notify EPA of any delay or anticipated delay in achieving compliance with any requirement of this Settlement Agreement. Such notification(s) shall be made verbally as soon as possible but not later than two (2) calendar days after Respondents or any one of them becomes aware or should have become aware of any such delay or anticipated delay, and in writing no later than seven (7) calendar days after Respondents or any one of them becomes aware, or should have become aware, of such delay or anticipated delay. Such written notification shall be certified by the Project Coordinator in accordance with Section XXII of this Settlement Agreement and shall fully describe the nature of the delay, including how it may affect the Work, RAP and schedule; the actions that will be or have been taken to mitigate, prevent and/or minimize further delay; and the timetable according to which the future actions to mitigate, prevent and/or minimize the delay will be taken. The Respondents shall ensure that their Project Coordinator provides Respondents with immediate notification of any project delays. The Respondents shall adopt all reasonable measures to avoid and minimize such delay.
- 14.2 To the extent Respondents intend to claim that any delay or anticipated delay described by Respondents in accordance with Paragraph 14.1 was or will be caused by circumstances beyond each of their control, Respondents shall, within fourteen (14) calendar days after Respondents become aware, or should have become aware, of such delay or anticipated delay, submit to EPA a "Notice of Force Majeure" in which Respondents fully demonstrate that the delay was caused by circumstances beyond each of their control which could not have been overcome by due diligence, the necessity of the proposed length of the delay, and that the Respondents took and are taking all reasonable measures to avoid and minimize delay. The Respondents shall have the burden of proving these facts to EPA. Any "Notice of Force Majeure" shall be Certified

by a responsible official of Respondents pursuant to Paragraph 22.1(b) of this Settlement Agreement.

- 14.3 Any such delay that EPA determines (1) has resulted or will result from circumstances beyond the control of the Respondents of any of them and (2) that could not and cannot be overcome by due diligence on the Respondents' part, shall not be deemed to be a violation of Respondents' obligations(s) under this Settlement Agreement, and shall not subject Respondents to stipulated penalties under this Settlement Agreement for that particular delay. In such event, the schedule affected by the delay shall be extended for a period EPA deems necessary to complete the Work on an expedited basis, but no greater than a period equal to the delay directly resulting from such circumstances. Increased costs of performance of the requirements of this Settlement Agreement or changed economic circumstances shall not be considered circumstances beyond the control of the Respondents. Delay in one item or component of Work or the RAP does not justify delay in timely achievement of other items or components. Each delay must be separately addressed and substantiated according to the provisions of Paragraphs 14.1 and 14.2 above.
- 14.4 Failure of the Respondents to comply with the notice requirements of Paragraphs 14.1 and 14.2 above shall constitute a waiver of the Respondents' right to invoke the benefits of this Section with respect to that event.
- 14.5 In the event that EPA and the Respondents cannot agree that any delay in compliance with the requirements of this Settlement Agreement has been or will be caused by circumstances beyond the control of the Respondents that cannot be overcome by due diligence, the dispute shall be resolved in accordance with the provisions of Section XII (Dispute Resolution) of this Settlement Agreement.

XV. RESERVATION OF RIGHTS BY EPA

- 15.1 The covenant not to sue set forth in Section XXVIII below does not pertain to any matters other than those expressly identified therein. EPA reserves, and this Settlement Agreement is without prejudice to, all rights against Respondents with respect to all other matters, including, but not limited to:
- a. claims based on a failure by Respondents to meet a requirement of this Settlement Agreement;
 - b. liability for costs ~~other than Source Area Removal not included within the definition of Future Response Costs recoverable under Section XXI of this Settlement Agreement;~~
 - c. liability for performance of response action other than the Work;
 - d. criminal liability;

- e. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
 - f. liability arising from the past, present, or future disposal, release or threat of release of Waste Materials outside of the Site; and
 - g. liability for costs incurred or to be incurred by the Agency for Toxic Substances and Disease Registry related to the Site.
- 15.2 Exempt as expressly provided in this Settlement Agreement, (1) each party reserves all rights, claims, interests and defenses it may otherwise have, and (2) nothing herein shall prevent EPA from seeking legal or equitable relief to enforce the terms of this Settlement Agreement, including the right to seek injunctive relief and/or the imposition of statutory penalties.
- 15.3 ~~As provided in~~ In the event EPA determines that Respondents have ceased implementation of any portion of the Work, are seriously or repeatedly deficient or late in their performance of the Work, or are implementing the Work in a manner that may cause an endangerment to human health or the environment, EPA may assume the performance of all or any portion of the Work as EPA determines necessary. Respondents may invoke the procedures set forth in Section XI ("Dispute Resolution") to dispute EPA's determination that the conditions for takeover of the Work have been triggered under this Paragraph. Notwithstanding any other provision of this Settlement Agreement, EPA expressly reserves its right to disapprove of Work performed by Respondents; to halt Work being performed by Respondents if Respondents have not complied with an approved RAP or this Settlement Agreement; or at any time EPA deems necessary to protect public health, welfare or the environment and to perform such Work; to request and require hereunder that Respondents correct and/or re-perform any and all Work disapproved by EPA; and/or to request or require that Respondents perform response actions in addition to those required by this Settlement Agreement. Further, EPA reserves the right to undertake response action at any time EPA deems appropriate. In the event EPA requires Respondents, and Respondents decline, to correct and/or re-perform work that has been disapproved by EPA and/or to perform response actions in addition to those required by this Settlement Agreement, EPA reserves the right to undertake such actions and seek reimbursement of the costs incurred and/or to seek any other appropriate relief. In addition, EPA reserves the right to undertake removal and/or remedial actions at any time that such actions are appropriate under the NCP and to seek reimbursement for any costs incurred and/or take any other action authorized by law. retains all authority and reserves all rights to take any and all response actions authorized by law.
- 15.4 EPA reserves the right to bring an action against the Respondents for recovery of all recoverable costs incurred by the United States related to this Settlement Agreement which are not reimbursed by the Respondents, as well as any other costs incurred by the United States in connection with response actions conducted at the Site.
- 15.5 This Settlement Agreement concerns certain response actions (Work described in Section VIII, above) concerning the Site. Such response actions might not fully address all

contamination at the Site. Subsequent response actions which may be deemed necessary by EPA are not addressed by this Settlement Agreement. EPA reserves all rights including, without limitation, the right to institute legal action against Respondents and/or any other parties in connection with the performance of any response actions not addressed by this Settlement Agreement.

- 15.6 Nothing in this Settlement Agreement shall limit the authority of the EPA On-Scene Coordinator as outlined in the NCP and CERCLA.

XVI. OTHER CLAIMS

- 16.1 Nothing in this Settlement Agreement shall constitute or be construed as a release from any claim, cause of action, or demand in law or equity against any person, firm, partnership, or corporation not bound by this Settlement Agreement for any liability it may have relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to, or taken from the Site.

XVII. OTHER LAWS

- 17.1 All Work shall be undertaken in accordance with the requirements of all applicable and/or relevant and appropriate local, State, and Federal laws and regulations, as required by the NCP.

XVIII. EFFECTIVE DATE AND SUBSEQUENT MODIFICATION

- 18.1 The effective date of this Settlement Agreement shall be three (3) business days following the date on which a fully executed copy of this Settlement Agreement is transmitted to Respondents or their counsel ("the Effective Date").
- 18.2 This Settlement Agreement may be amended by mutual agreement of EPA and the Respondents. Such amendments shall be in writing and shall have as their effective date the date on which such amendments are signed by EPA. Modifications to the EPA-approved RAP and its implementation may be made by ~~Mutual~~ mutual agreement of the Project Coordinators. Such modifications shall be memorialized in writing by the Project Coordinators.
- 18.3 Any reports, plans, specifications, schedules, or other submissions required by this Settlement Agreement are, upon approval by EPA, incorporated into this Settlement Agreement. Any non-compliance with such EPA-approved reports, plans, specifications, schedules, or other submissions shall be considered non-compliance with the requirements of this Settlement Agreement and will subject the Respondents to the requirements of Section XIII (Delay in Performance and Stipulated Penalties), above. Determinations of non-compliance will be made by EPA.
- 18.4 No informal advice, guidance, suggestions, or comments by EPA regarding reports, plans, specifications, schedules, or other submissions by the Respondents or the requirements of

this Settlement Agreement will be construed as relieving the Respondents of their obligation to obtain formal approval when required by this Settlement Agreement, and to comply with the requirements of this Settlement Agreement unless formally modified.

XIX. LIABILITY OF THE UNITED STATES GOVERNMENT

- 19.1 Neither the United States Government nor any agency thereof shall be liable for any injuries or damages to persons or property resulting from acts or omissions of Respondents, or of their employees, agents, servants, receivers, successors or assigns, or of any persons, including, but not limited to, firms, corporations, subsidiaries, contractors, or consultants in carrying out the Work, nor shall the United States Government or any agency thereof be held out as a party to any contract entered into by Respondents in carrying out the Work.

XX. INDEMNIFICATION AND HOLD HARMLESS

- 20.1 Respondents agree to indemnify and hold harmless the United States, its agencies, departments, agents, officers, employees, and representatives from any and all causes of action caused by any acts or omissions of Respondents, of their contractors in carrying out the work required by this Settlement Agreement.

20.2

XXI. REIMBURSEMENT PAYMENT OF SOURCE AREA REMOVAL FUTURE RESPONSE COSTS BY RESPONDENTS

- 21.1 For purposes of this Settlement Agreement:

- a. ~~"Source Area Removal Future Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States incurs in: (1) reviewing or developing plans, reports, and other items pursuant to this Settlement Agreement; verifying the Work; or otherwise enforcing the requirements of this Settlement Agreement with respect to the Work, pursuant to Section 104(a)(1) of CERCLA, 42 U.S.C. § 9604(a)(1); and (2) implementing the Work. Future Response Costs shall include, but are not limited to, payroll costs, contractor costs, travel costs, laboratory costs, Agency for Toxic Substances and Disease Registry costs, the costs incurred pursuant Paragraph 11.2 (costs and attorneys fees and any monies paid to secure access, including the amount of just compensation).~~
- b. ~~"Interest" shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.~~

21.1 ~~21.2~~ Respondents shall pay EPA all Future Response Costs not inconsistent with the NCP. On a periodic basis, EPA will send Respondents a bill requiring payment that includes a cost summary, which includes direct and indirect costs incurred by EPA and its contractors.

21.2 ~~21.3~~ Respondents shall make all payments within ~~thirtysixty (3060)~~ days of receipt of each bill requiring payment, except as otherwise provided in Paragraph 21.6 of this Settlement Agreement. Payments shall be made in the following manner:

All payments to EPA under this Section XXI ~~which that~~ are paid by certified or cashier's check(s) shall be made payable to "EPA-Hazardous Substances Superfund", and, if sent by regular mail, shall be addressed for delivery to:

U.S. EPA
ATTENTION: Superfund Payments
Cincinnati Finance Center
P.O. Box 979076
St. Louis, MO 63197-9000.

All payments under this Section XXI paid by certified or cashier's check and sent by overnight delivery service shall be addressed for delivery to:

U.S. EPA
ATTENTION: Superfund Payments
U.S. Bank
P.O. Box 9790761
Mail Station SL-MO-C2GL
1005 Convention Plaza
St. Louis, MO 63101

All payments under this Section XXI made by certified or cashier's check in any currency drawn on banks with no USA branches shall be addressed for delivery to:

U.S. EPA
Cincinnati Finance Center
U.S. EPA, MS-NWD
26 West Martin Luther King Drive
Cincinnati, Ohio 45268-0001

All payments made by electronic wire transfer shall be directed to:

Federal Reserve Bank of New York
ABA = 021030004
Account No. = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045

Field Tag 4200 of the Fedwire message should read:
D 68010727 Environmental Protection Agency.

All payments shall indicate that the payment is for Future Response Costs, and shall reference EPA Region III and Site ID Number 032H, the EPA Docket Number _____, and the name and address of the Respondents making payment. Copies of the transmittal letters and the checks shall simultaneously be sent to EPA's Project Coordinator as provided in Paragraph 8.3, and to the following:

Docket Clerk (3RC00)
U.S. EPA Region III
1650 Arch Street
Philadelphia, PA 19103-2029

Daria Arnold (3PM30)
U.S. EPA Region III
1650 Arch Street
Philadelphia, PA 19103-2029

- 21.3 ~~21.4~~ The total amount to be paid by Respondents pursuant to this Section XXI shall be deposited in the Metro Container Corporation Superfund Site Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.
- 21.4 ~~21.5~~ If Respondents do not pay Future Response Costs within ~~thirty~~ sixty (30/60) days of Respondents' receipt of a bill, Respondents shall pay Interest on the unpaid balance. The Interest on unpaid Future Response Costs shall begin to accrue on the date of the bill and shall continue to accrue until the date of payment. If EPA receives a partial payment, Interest shall accrue on any unpaid balance. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to the United States by virtue of Respondents' failure to make timely payments under this Section XXI including, but not limited to, payments of stipulated penalties pursuant to Section XIII. Respondents shall make all payments required by this Paragraph in the manner described in Paragraph 21.3.
- 21.5 ~~21.6~~ Respondents may contest payment of any Future Response Costs if they determine that EPA has made an accounting ~~error~~ or mathematical error, including a cost item that is not within the definition of Future Response Costs, or if they believe EPA ~~injured~~ incurred costs as a direct result of an EPA action that was inconsistent with the NCP. Such

objection shall be made in writing within thirty (30) days of receipt of the bill and must be sent to the EPA Project Coordinator. Any such objection shall specifically identify the contested Future Response Costs and the basis for objection. In the event of an objection, Respondents shall within the thirty (30)-day period pay all uncontested Future Response Costs to EPA in the manner described in Paragraph 21.3. Simultaneously, Respondents shall establish an interest-bearing escrow account in a federally-insured bank duly chartered in the Commonwealth of Pennsylvania and remit to that escrow account funds equivalent to the amount of the contested Future Response Costs. Respondents shall send to the EPA Project Coordinator a copy of the transmittal letter and check paying the uncontested Future Response Costs, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which ~~that~~ the escrow account is established as well as a bank statement showing the initial balance of the escrow account. Simultaneously with establishment of the escrow account, Respondents shall initiate the Dispute Resolution procedures in Section XII ("Dispute Resolution"). If EPA prevails in the dispute, within five (5) days of the resolution of the dispute, Respondents shall pay the sums due (with accrued interest) to EPA in the manner described in Paragraph 21.3. If Respondents prevail concerning any aspect of the contested costs, Respondents shall pay that portion of the costs (plus associated accrued interest) for which they did not prevail to EPA in the manner described in Paragraph 21.3. Respondents shall be disbursed any balance of the escrow account. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XII ("Dispute Resolution") shall be the exclusive mechanisms for resolving disputes regarding Respondents' obligation to reimburse EPA for its Future Response Costs.

XXII. CERTIFICATION OF COMPLIANCE

- 22.1 i) Unless otherwise required by the terms of this Settlement Agreement, any notice, report, certification, data presentation or other document submitted by Respondents under or pursuant to this Settlement Agreement ~~which~~ that discusses, describes, demonstrates, or supports any finding or makes any representation concerning Respondents' compliance or non-compliance with any requirement(s) of this Settlement Agreement shall be certified by each Respondent, a responsible official of each Respondent, or by the Project Coordinator for the Respondents. The term "responsible official" means: (i) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the corporation, or (ii) the manager of one or more manufacturing facilities employing more than 250 persons or having gross annual sales or expenditures exceeding \$25 million (in second-quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures. The responsible official of a partnership or sole proprietorship means the general partner or the proprietor, respectively.
- a. The written Final Report required by Paragraph 8.11 of this Settlement Agreement, any written notification described in Paragraph 12.1 of this Settlement

Agreement and any "Notice of Force Majeure" described in Paragraph 14.2 of this Settlement Agreement shall be certified by each Respondent, or a responsible official of each Respondent, or by the Project Coordinator for the Respondents.

- 22.2 The certification required by Paragraph 22.1 of this Settlement Agreement shall be in the following form:

"Except as provided below, I certify that the information contained in or accompanying this (specify [type of submission]) Submission] is true, accurate and complete."

~~I am aware that there are significant penalties for submitting false information including the possibility of fines and imprisonment for knowing violations.~~

"As to those portions of this [type of Submission] for which I cannot personally verify their accuracy, I certify that this [type of Submission] and all attachments were prepared at my direction and with my review, in accordance with a system designed to assure that qualified personnel gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is true, accurate, and complete to the best of my knowledge, information, and belief."

"This certification shall not apply to information contained herein that was inserted into this [type of Submission] by EPA or was required by EPA to be inserted into this [type of Submission] over my objection."

Signature: _____

Name (print): _____

Title: _____

- 22.3 Submission of documents pursuant to this Settlement Agreement which are found by EPA to contain knowingly false information shall constitute a failure to comply with this Settlement Agreement and shall subject Respondents to, among other things, stipulated penalties whether or not a responsible official of Respondents has certified the document.

XXIII. SHIPMENT OF HAZARDOUS SUBSTANCES

- 23.1 Respondents shall, prior to any off-site shipment of hazardous substances from the Site to an out-of-state waste management facility, provide written notification to the appropriate state environmental official in the receiving state and to EPA's Project Coordinator of such shipment of hazardous substances. However, the notification to EPA of shipments shall not apply to any such off-site shipments when the total volume of all such shipments will not exceed ten (10) cubic yards. Notifications to States in those circumstances shall be governed by applicable state law.

- 23.2 The notification required by Paragraph 23.1 shall be in writing and shall include the following information, where available: (1) the name and location of the facility to which the hazardous substances are to be shipped; (2) the type and quantity of the hazardous substances to be shipped; (3) the expected schedule for the shipment of the hazardous substances; and (4) the method of transmission of the hazardous substances. Respondents shall notify the receiving state of major changes in the shipment plan, such as a decision to ship the hazardous substances to another facility within the same state or to a facility in another state.
- 23.3 The identity of the receiving facility and state will be determined by Respondents. Respondents shall provide all relevant information, including information required by Paragraph 23.1, above, relating to the off-site shipments as soon as practicable but no later than one (1) business day before the hazardous substances are actually shipped.

XXIV. RECORD RETENTION

- 24.1 Until 10 years after Respondents' receipt of EPA's notification pursuant to Paragraph 27.1 (Notice of Completion), ~~Respondents~~ each Respondent shall preserve and retain all non-identical copies of records and documents (including records or documents in electronic form) now in their possession or control or which come into their possession or control that relate in any manner to the performance of the Work or the liability of any person under CERCLA with respect to the Site, regardless of any corporate retention policy to the contrary. Until 10 years after Respondents' receipt of EPA's notification pursuant to Paragraph 27.1 (Notice of Completion), Respondents shall also instruct their contractors and agents to preserve all documents, records, and information of whatever kind, nature or description relating to performance of the Work.
- 24.2 At the conclusion of this document retention period, Respondents shall notify EPA at least 90 days prior to the destruction of any such records or documents, and, upon request by EPA, Respondents shall deliver any such records or documents to EPA. Respondents may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Respondents assert such a privilege, they shall provide EPA with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record or information; (4) the name and title of each addressee and recipient; (5) a description of the subject of the document, record, or information; and (6) the privilege asserted by Respondents. However, no documents, reports or other information created or generated pursuant to the requirements of this Settlement Agreement shall be withheld on the grounds that they are privileged.

XXV. RESERVED

XXVI. DEFINITIONS

- 26.1 **"Business days"** as used in this Settlement Agreement shall mean every day of the week except Saturdays, Sundays and federal holidays.
- 26.2 **"Calendar days"** as used in this Settlement Agreement shall mean every day of the week, including Saturdays, Sundays and federal holidays. In computing any period of time under this Settlement Agreement, where the last day would fall on a Saturday, Sunday, or Federal holiday, the period shall run until the close of business of the next working day.
- 26.3 **"Days"** as used herein shall mean "calendar days" unless specified otherwise.
- 26.4 **"Effective Date"** shall mean the effective date of this Settlement Agreement as provided in Section XVIII.
- 26.5 **"Future Response Costs"** shall mean all costs, including, but not limited to, direct and indirect costs, that the United States incurs in reviewing or developing plans, reports, and other items pursuant to this Settlement Agreement; verifying the Work; or otherwise enforcing the requirements of this Settlement Agreement with respect to the Work pursuant to Section 104(a)(1) of CERCLA, 42 U.S.C. § 9604(a)(1). Future Response Costs shall include, but are not limited to, payroll costs, contractor costs, travel costs, laboratory costs, Agency for Toxic Substances and Disease Registry costs, **and the costs incurred pursuant to Paragraph 10.6** (costs and attorneys fees and any monies paid to secure access, including the amount of just compensation).
- 26.6 **"Interest"** shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.
- 26.7 **"Site"** shall mean the Metro Container Corporation Superfund Site described more fully in Paragraph 3.1 of this Settlement Agreement.
- 26.8 **"Work"** as used herein shall mean all requirements of activities Respondents are required to perform under this Settlement Agreement, including any modifications hereto, except those required by Section XXIV ("Retention of Records") and Section XXI ("Payment of Future Response Costs by Respondents").
- 26.9 **All terms not defined herein shall have the meanings set forth in CERCLA and the NCP.**

XXVII. NOTICE OF COMPLETION

- 27.1 When EPA determines, after EPA's review and approval of the Final Report required pursuant to Paragraph 8.11 of this Settlement Agreement, that all response action specified in Section VIII of this Settlement Agreement has been fully performed, and

upon receipt of costs and penalties assessed by EPA, with the exception of any continuing obligations required by this Settlement Agreement, including those requirements specified in Sections XV ("Reservation of Rights"), XVI ("Other Claims"), XIX ("Liability of the United States"), XX ("Indemnification and Hold Harmless"), and XXIV ("Record Retention"), EPA will provide a notice of completion to the Respondents.

XXVIII. COVENANT NOT TO SUE BY EPA

- 28.1 ~~From the effective date of this Settlement Agreement and for as long as EPA determines that~~ In consideration of the actions that will be performed and the payments that will be made by Respondents under the terms of this Settlement Agreement, including any modifications made hereto, are being fully complied with, and except for any proceeding to enforce its terms or collect any applicable costs or penalties, EPA agrees ~~except as otherwise specifically provided in this Settlement Agreement, EPA covenants not to sue or to take any administrative action against the Respondents for the Work required by Respondents pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), for the Work and for Future Response Costs. This covenant not to sue shall take effect upon the Effective Date and is conditioned upon the complete and satisfactory performance by Respondents of all their respective obligations under this Settlement Agreement, including for reimbursement of costs incurred in connection with this Settlement Agreement, but not limited to, payment of Future Response Costs pursuant to Section XVIII. This covenant not to sue extends only to Respondents and does not extend to any other person not identified on Appendix A.~~
- 28.2 Nothing in this Settlement Agreement shall be construed to limit the rights EPA has reserved under Section XV of this Settlement Agreement.
- 28.3 Nothing in this Settlement Agreement shall be construed to grant any rights to persons not a party to this Settlement Agreement. Further, nothing in this Settlement Agreement precludes the United States or the Respondents from asserting any claims, causes of action, or demands, against any person not parties to this Settlement Agreement for indemnification, contribution, or cost recovery. Nothing herein diminishes the right of the United States, pursuant to Sections 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2)(3), to pursue any such persons to obtain additional response costs or response action and to enter into settlements that provide contribution protection to such persons.

XXIX. COVENANT NOT TO SUE BY RESPONDENTS

- 29.1 Respondents covenant not to sue and agree not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the Work, ~~oversight costs paid under this Settlement Agreement~~ Future Response Costs, or this Settlement Agreement, including, but not limited to:
- a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund established by 26 U.S.C. § 9507, based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law; or

- b. ~~any claim arising out of the Work or arising out of response actions at or in connection with the Site for which Future Response Costs have been or will be incurred, including any claim under the United States Constitution, the [State] Commonwealth of Pennsylvania Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; or~~
- c. ~~any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to the Site.~~

Except as expressly provided in Paragraph 29.3 (Waiver of Claims) these covenants not to sue shall not apply in the event the United States brings a cause of action or issues an order pursuant to the reservations set forth in Paragraphs 15.1.b, -c, and -e- g., but only to the extent that Respondents' claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

- 29.2 Nothing in this Settlement Agreement shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).
- 29.3 Respondents agree not to assert any claims and to waive all claims or causes of action that they may have for all matters relating to the Site, including for contribution, against any person where the person's liability to Respondents with respect to the Site is based solely on having arranged for disposal or treatment, or for transport for disposal or treatment, of hazardous substances at the Site, or having accepted for transport for disposal or treatment of hazardous substances at the Site, if
 - a. the materials contributed by such person to the Site containing hazardous substances did not exceed the greater of i) 0.002% of the total volume of waste at the Site, if those materials were Municipal Solid Waste, or ii) 110 gallons of liquid materials or 200 pounds of solid materials.
 - b. This waiver shall not apply to any claim or cause of action against any person meeting the above criteria if EPA has determined that: (a) the materials contributed to the Site by such person contributed or could contribute significantly to the costs of response at the Site; (b) the person has failed to comply with any information request or administrative subpoena issued pursuant to Section 104(e) or 122(e) of CERCLA, 42 U.S.C. § 9604(e) or § 9622(e); or (c) the person impeded or is impeding, through action or inaction, the performance of response action or natural resource restoration with respect to the Site. This waiver also shall not apply with respect to any defense, claim, or cause of action that Respondents may have against any person if such person asserts a claim or cause of action relating to the Site against Respondents.

XXX. CONTRIBUTION

- 30.1 The Parties agree that this Settlement Agreement constitutes an administrative settlement for purposes of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and that the Respondents are entitled, as of the effective date of this Settlement Agreement ~~Effective Date~~, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), or as may be otherwise provided by law, for "matters addressed" in this Settlement Agreement. The "matters addressed" in this Settlement Agreement ~~is~~ are the Work and payment of costs under Section XXI of this Settlement Agreement ~~Future Response Costs~~.
- 30.2 The Parties agree that this Settlement Agreement constitutes an administrative settlement for purposes of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B), pursuant to which the Respondents have, as of the effective date of this Settlement Agreement ~~Effective Date~~, resolved their liability to the United States for the Work and payment of costs under Section XXI of ~~matters addressed in this Settlement Agreement~~.
- 30.3 Nothing in this Settlement Agreement precludes the United States or Respondents from asserting any claims, causes of action, or demands for indemnification, contribution, or cost recovery against any persons not parties to this Settlement Agreement. Nothing herein diminishes the right of the United States, pursuant to Sections 113(f)(2) and (3) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and (3), to pursue any such persons to obtain additional response costs or response action and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2).

FOR RESPONDENT _____:

[Signature]

Please Type the Following:

Name: _____

Title: _____

Address: _____

Document comparison by Workshare Compare on Sunday, May 03, 2015
3:30:41 PM

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Rendering set	Standard

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Format change	
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Moved cell	
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